

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

April 2009 Update

May 2005 Court Decision

- Our report today summarizes significant changes to the statewide DBE program effective June 2nd 2009 and requests authorization for the Executive Director to:
 - execute a new DBE Implementation Agreement for Local Agencies; and
 - implement measures to comply with the program changes for Federally-funded contracts.

May 2005 Court Decision

- In May 2005, a decision by the U.S. Ninth Circuit Court of Appeals upheld the constitutionality of federal DBE regulations; but found that there supporting documentation such as a disparity study was needed to warrant DBE contract goals.

Definition

- A “race conscious” or contract specific goal procurement requires that the contractor demonstrate good faith efforts towards achieving a stated DBE goal through proactive means to attract DBE participation in the contract.
- In comparison, “race neutral” methods assume that DBE participation would occur without a specific DBE goal or “good faith efforts”, because of the significant availability of DBE firms in a specific field and past practices.

- As a result of the court ruling, in May 1, 2006: Caltrans implemented a statewide wholly Race Neutral (RN) DBE program **for all federally funded contracts.**
 - No contract goals and No good faith efforts
- Local Agencies were no longer allowed to have their own DBE program.
- Caltrans commenced a statewide Disparity Study
- During this period, staff worked very closely with the MCAC Subcommittee on Contracting to identify ways to achieve greater DBE and local/small business participation in all MTC contracts.

Disparity Study Results

- In June 2007, Caltrans finalized a statewide disparity study. The results were:
 - “Statistically significant” underutilization:
 - African Americans
 - Asian Pacific
 - Native Americans
 - Women
 - At or near parity:
 - Hispanic Males
 - Subcontinent Asian Males

Disparity Study Results

- The findings revealed that Caltrans should return to a Race Conscious program to address underutilization in **federally funded contracts**
- On March 4th 2009, Caltrans advised local agencies of mandatory changes to the statewide DBE program

New Statewide Goal

- As a result, Caltrans has implemented a new Statewide 13.5% DBE Goal for **federally funded contracts** for FFY 2009. This includes:
 - 6.75% Race Neutral
 - 6.75% Race Conscious/Contract Goals

June 2, 2009 Changes

- Changes to the program are as follows:
 - No later than June 2, 2009:
 - All agencies must execute a new Caltrans DBE Implementation Agreement to establish race conscious means or contract goals for meeting the overall statewide annual DBE goal, limited to Underutilized DBEs previously identified.
 - After June 2, 2009:
 - Contracts that do not meet the new requirements will be ineligible for federal funding.
 - This includes the new economic stimulus projects.

MTC will:

- Execute new implementation agreement
- Update procurement and contract boilerplates
- Prepare MTC's FY 2009-10 Annual Anticipated DBE Participation Level (AADPL) for submission to Caltrans in June.

MTC Next Steps

- Award **federally funded** contracts to “responsible” bidders
 - who meet/exceed the DBE contract goals; or demonstrate “good faith efforts” to comply
- Monitor contracts for DBE participation
- Report DBE achievement

MTC Outreach Efforts

- Quarterly Contracting BOC Newsletter
- Website includes:
 - Upcoming contracting opportunities
 - Recently awarded Contracts

2007 Networking Events

- 3/21/07 - Caltrans Business Procurement Fair
- 3/23/07 - Interagency Cooperative Infrastructure Bond & Small Business Outreach Event (note MTC actively participated in development and participation in the event)
- 3/29/07 - Caltrans District 4, Contractor Outreach Meeting
- 4/13/07 - California Unified Certification Program (CUCP) Public Participation Meeting held at MTC
- 5/24/07 - Bay Area Vendor Fair
- 12/12/07 - MTC Outreach Event

2008 Networking Events

- 2/14/08 - Congresswoman Ellen Tauscher's Small Business Government Contracting Seminar
- 4/3/08 - Cal Mentor Annual Meeting
- 4/23/08 - California Unified Certification Program (CUCP) Public Participation Meeting
- 7/23/08 - BOC Outreach-networking event for A&E firms held
- 10/22/08 – BOC Contractor & Subcontractor Outreach Event at MTC

2009 Networking Events

- 1/29/09 – BOC Meet the Buyer Outreach Event at MTC
- 3/25/09 – BOC DBE Certification Workshop
- 4/22/09 – CUCP Public Participation Meeting will be held at MTC
- 7/09 - BOC Financial Management, and Bonding & Insurance training at MTC